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No. 1254

# In the Supreme Court of the United States

OCTOBER TERM, 1967

ROANOKE IRON & BRIDGE WORKS, INC., PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

ARNOLD ORDMAN,
*General Counsel,*
DOMINICK L. MANOLI,
*Associate General Counsel,*
NORTON J. COME,
*Assistant General Counsel,*
*National Labor Relations Board,*
*Washington, D.C. 20570.*

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 38–60) is not yet officially reported. The decision and order of the National Labor Relations Board (Pet. App. 15–35) are reported at 160 NLRB 175.

### JURISDICTION

The decree of the court of appeals (Pet. App. 36–37) was entered on December 27, 1967. The petition for a writ of certiorari was filed on March 22, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).



297-344—68

## QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's finding that the employer failed to bargain in good faith regarding the union's request for a clause providing for the checkoff of union dues.

2. Whether the Board properly concluded that the employer's lack of good faith on the checkoff issue was not excused by the circumstance that the employer was willing to, and did, reach an agreement with the union on other matters.

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151 *et seq.*) are set forth in the Appendix to the petition (p. 14).

## STATEMENT

In 1951, the United Steelworkers of America, AFL–CIO (the Union) [1] was certified as the representative of the Company's employees. A period of protracted bargaining ensued, largely because of the Company's refusal to accede to the Union's request for a voluntary dues checkoff clause—a provision requiring the Company to deduct union dues from the wages of employees authorizing such a deduction and pay such amounts over to the Union (Pet. App. 16; J.A. 51.) [2] When the Union finally yielded on this issue, a one-year contract was signed; but when that contract ex-

[1] The Union was the charging party before the Board and was a party in the court of appeals proceedings; it is thus a party here.

[2] "J.A." refers to the Joint Appendix in the court below.

pired, no attempt was made to negotiate another one (Pet. App. 16; J.A. 14).

In 1961, the Steel Fabricators Union, an independent union composed solely of the Company's employees, was formed and later certified by the Board. That union asked for and was granted a voluntary dues checkoff clause (Pet. App. 16; J.A. 9, 94–95). The Company acceded to this request because "they said it would be a great help to them if we would do this for them," and because that union could not survive without it (Pet. App. 16–17; J.A. 52, 64–65). No union dues were actually checked off, however, and the Steel Fabricators Union had ceased to exist by 1964 (Pet. App. 18; J.A. 10).

In mid-1964, the Steelworkers Union again began to organize the Company's employees. The Company countered with a series of letters. Thus, in a letter dated July 1, the Company boasted that, because a checkoff had not been agreed to in 1951, "this contract [with the Union] was not renewed the following year" (Pet. App. 19; J.A. 82–83). On August 13, the Company wrote that "[w]e agreed on a few things [in 1951], but we drew the line at collecting Union dues out of your pay check [and] [w]ithin a few months, many employees stopped paying the Union any money * * *, and when the contract ran out, the Union pulled out and left us" (Pet. App. 19; J.A. 84–86). And, in a letter dated September 2, the Company again emphasized that, when the employees had stopped paying dues "ten years ago * * * the Union walked off" (Pet. App. 21; J.A. 91–93).

On September 7, 1964, the Union nonetheless won a Board election (by a vote of 97 to 26), and was again certified as the representative of the Company's employees (Pet. App. 21; J.A. 16). Bargaining negotiations began in October 1964, and late in October 1965, after about 25 meetings and an eight-month strike, the parties signed an agreement which covered all issues except union dues checkoff. The Company refused to accept any form of dues collection clause, and the parties agreed to submit the question whether the Company had bargained in good faith on that issue to the Board for determination (Pet. App. 21–22).

The facts with respect to the bargaining on the dues collection issue may be conveniently summarized. That issue was raised at each of the bargaining sessions, the Union suggesting six alternative plans for collecting dues and the Company rejecting all of them (Pet. App. 22–23). The Union pointed out that the employees were scattered over a large area around Roanoke, thus making individual collections impracticable, and that, when the Union last represented the Company's employees, it had been unable to survive without a dues checkoff (Pet. App. 24; J.A. 20, 25, 33, 60). The Union also noted that the Company had granted a checkoff to the Steel Fabricators Union when that union represented its employees, and that it made payroll deductions for the United Fund, a local charity (Pet. App. 24; J.A. 12, 16). Basically, the Company's position was that, since the Union had won the election by a large margin, it should collect its own dues—dues collection was the Union's

job and not the Company's (Pet. App. 24; J.A. 16–17, 20). The Company did not claim that a checkoff would be inconvenient or too expensive (Pet. App. 24; J.A. 20, 47). The Company acknowledged that it had granted the checkoff to the Steel Fabricators Union because that union claimed that it could not survive without it (Pet. App. 24; J.A. 52). It also acknowledged that the reason it made deductions for the United Fund was that, without them, only a portion of the money pledged could be collected and thus the program would not be able to function effectively (Pet. App. 25; J.A. 12, 59).

The Board (with two members dissenting) adopted the Trial Examiner's findings that the Company refused to agree to a dues checkoff for the purpose of damaging or destroying the Union, and that the Company thereby refused to bargain in good faith on that issue. Accordingly, the Board concluded that the Company had violated Section 8(a) (5) and (1) of the Act (Pet. App. 28–30, 33), and ordered the Company to cease and desist from the unfair labor practice found, to bargain in good faith with the Union with respect to its checkoff proposals, and to post appropriate notices (Pet. App. 31–32). The court of appeals (with one judge dissenting) sustained the Board's findings and enforced its order (Pet. App. 38–60).

## ARGUMENT

1. The basic issue which petitioner seeks to raise—*i.e.*, whether an employer violates his bargaining obligation under the Act where he declines as a matter of "principle" to agree to the union's dues checkoff

provision—is not presented here. The Board found, and the court of appeals sustained its finding, that the Company's refusal to accede to such a clause was not grounded simply on its belief that an employer should not help a union collect its dues, even though a consequence of this position would be to weaken the union. Rather, the Board found, the Company's intent, in taking the position it did on this issue, was to weaken and destroy the Union (Pet. App. 28–29, 41). Accordingly, the threshold question is whether the Board's finding as to petitioner's purpose in refusing to agree to a checkoff provision is supported by substantial evidence. Such an issue does not warrant review by this Court. See *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 491. In any event, the court below correctly concluded that the Board's finding that the Company acted in bad faith is amply supported by the record.[3]

2. Contrary to petitioner's contention (Pet. 9), the Board's decision in this case is fully consistent with the principle enunciated in *National Labor Relations Board* v. *Katz,* 369 U.S. 736. That case holds that an employer violates his bargaining obligation under the Act where he takes action on a mandatory bargaining subject without first negotiating with the union, not-

[3] As the court below noted (Pet. App. 47), "The Board's crucial finding negativing good faith was amply supported by the evidence: the 1964 campaign literature wherein the company itself identified refusal of checkoff with undermining this union's position; the 1961 action wherein the company granted the checkoff to the more favored local union; the lack of reliance on inconvenience or other business purpose; and the blanket refusal to consider alternatives—all in a context of vigorous anti-union animus."

withstanding that the employer had a good-faith desire to reach an overall agreement. The rationale for the holding is that such unilateral action is so incompatible with the duty to bargain collectively imposed by the Act that it is unlawful irrespective of the lack of subjective bad faith. Petitioner's action here was equally incompatible with the Act's bargaining requirements.

Thus, as the court below pointed out (Pet. App. 46), "Entering or conducting negotiations with the intent to destroy the other party would appear to be the archetypal example of a violation of the requirement that the parties must act in good faith." Since this was found to be petitioner's objective in refusing to agree to a dues checkoff clause, it may properly be held to have violated its duty to bargain collectively even though it was willing to, and did, enter into an agreement covering other subjects.

## CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

ARNOLD ORDMAN,
*General Counsel,*
DOMINICK L. MANOLI,
*Associate General Counsel,*
NORTON J. COME,
*Assistant General Counsel,*
*National Labor Relations Board.*

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